

ORIGINAL  
FILED

JUN 6 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 TOMIO B. NARITA (SBN 156576)  
2 JEFFREY A. TOPOR (SBN 195545)  
3 ROBIN M. BOWEN (SBN 230309)  
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12 Attorneys for defendant  
13 Asset Acceptance, LLC

E-filing

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

EMC

16 ELIZABETH CONTRERAS, an  
17 individual,

18 Plaintiff,

19 vs.

20 HSBC CONSUMER LENDING USA,  
21 dba BENEFICIAL;  
22 ASSET ACCEPTANCE, LLC;  
23 DOES 1 THROUGH 10,

24 Defendants.

CASE NO.:

NOTICE OF REMOVAL

CV 08 2849

BY FAX

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Asset Acceptance, LLC ("Asset")  
3 hereby removes to this Court the state court action described below.

4 1. On April 24, 2008, a complaint was filed against Asset and HSBC  
5 Consumer Lending USA, dba Beneficial, by plaintiff Elizabeth Contreras  
6 ("Plaintiff") in an action pending in the Superior Court of the State of California in  
7 and for the County of San Francisco, entitled *Elizabeth Contreras v. HSBC*  
8 *Consumer Lending, dba Beneficial et al.*, Case No. CGC 08 474587. A copy of the  
9 state court complaint ("Complaint") is attached hereto as **Exhibit A**.

10 2. This removal petition is timely under 28 U.S.C. § 1446(b) because the  
11 Complaint was first received by Asset on May 9, 2008.

12 **JURISDICTION**

13 3. This action is a civil action of which this Court has original  
14 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by  
15 Asset pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint  
16 asserts federal claims against Asset allegedly arising under 15 U.S.C. § 1692 *et seq.*  
17 (the Fair Debt Collection Practices Act).

18 **VENUE**

19 4. The Complaint was filed in the Superior Court of the State of  
20 California, County of San Francisco. Therefore, venue in the San Francisco  
21 Division or the Oakland Division of this District is proper. *See* Local Rule 3-2(d)  
22 (stating "all civil actions which arise in the counties of Alameda . . . shall be  
23 assigned to the San Francisco Division or the Oakland Division"); 28 U.S.C. §  
24 1441(a) (providing for removal "to the district court of the United States for the  
25 district and division embracing the place" where the state court action is pending).

26 //

1           5.     Asset is represented by the undersigned. Defendant HSBC Consumer  
2 Lending USA dba Beneficial consents to this removal. *See* Defendant HSBC  
3 Consumer Lending USA's Consent to Removal filed herewith. Thus, all  
4 defendants consent to the removal of this action.

5  
6 DATED: June 6, 2008

SIMMONDS & NARITA LLP  
TOMIO B. NARITA  
JEFFREY A. TOPOR  
ROBIN M. BOWEN

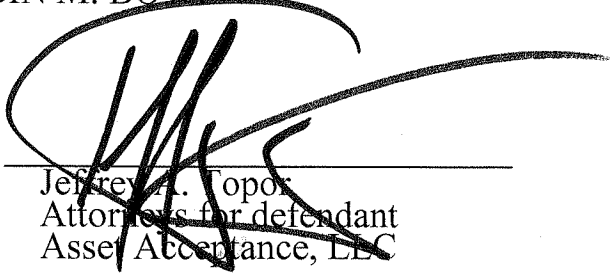
7  
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9  
10 By:   
11       Jeffrey A. Topor  
12       Attorneys for defendant  
13       Asset Acceptance, LLC  
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20  
21  
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28

Exhibit A

1 Irving L. Berg (SBN 36273)  
2 THE BERG LAW GROUP  
3 145 Town Center, PMB 493  
4 Corte Madera, California 94925  
(415) 924-0742  
(415) 891-8208 (Fax)  
5 irvberg@comcast.net (e-mail)

**ENDORSED  
FILED**  
San Francisco County Superior Court

APR 24 2008

CASE MANAGEMENT CONFERENCE **GORDON PARK-LI, Clerk**  
**PARAM NATT**

6 ATTORNEY FOR PLAINTIFF

AUG 22 2008 - 10 AM

Deputy Clerk

**DEPARTMENT 212**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LIMITED CIVIL

10 ELIZABETH CONTRERAS, an individual,

Case No.: **CGC-08-474587**

11 Plaintiff,

12 v.

**COMPLAINT SEEKING DAMAGES FOR  
UNLAWFUL DEBT COLLECTION  
PRACTICES**

13 HSBC CONSUMER LENDING USA, dba

14 BENEFICIAL; ASSET ACCEPTANCE LLC; **DEMAND FOR JURY TRIAL**  
DOES 1 THROUGH 10,

15 Defendants. /

16  
17 **I. INTRODUCTION**

18 1. Plaintiff, ELIZABETH CONTRERAS ("Ms. Contreras"), is a resident of San  
19 Francisco County. Plaintiff brings this lawsuit seeking damages from Defendants HSBC  
20 CONSUMER LENDING USA dba BENEFICIAL ("Beneficial"), and ASSET ACCEPTANCE  
21 LLC ("Asset"), for their violation of the California and Federal laws regulating consumer debt  
22 collection practices.

23 2. The Defendants, Beneficial and Asset, are debt collectors as defined at Cal. Civ.  
24 Code § 1788.2(c), which provides:

25 (c) The term "debt collector" means any person who, in the  
26 ordinary course of business, regularly, on behalf of himself or  
herself or others, engages in debt collection.

27 3. The Defendants are also debt collectors under the federal law, 15 U.S.C. §  
28 1692a(6).

COMPLAINT SEEKING DAMAGES

4 The California law, known as the Rosenthal Fair Debt Collection Practices Act, is  
 at Cal. Civ. Code § 1788, *et seq.* The California law incorporates provisions of the federal Fair  
 Debt Collection Practices Act ("FDCPA"), pursuant to Cal. Civ. Code § 1788.17, which states:

**....every debt collector collecting or attempting to collect a  
 consumer debt shall comply with the provisions of Sections  
 1692b to 1692j.... of Title 15 of the United States Code [i.e., the  
 FDCPA].**

5. Plaintiff, by this action, seeks statutory damages, attorney's fees and costs.

## **II. JURISDICTION AND VENUE**

6. Jurisdiction in this court is conferred by 15 U.S.C. § 1692k(d).

7. Venue is proper in this county because Defendants do business in this county, and  
 the collection communications were received in this county.

## **III. PARTIES**

8. Plaintiff, Elizabeth Contreras, is a single woman who resides in San Francisco,  
 California.

9. Defendant Beneficial has a principal office at c/o HSBC Finance Corporation,  
 2700 Sanders Road, Prospect Heights, IL 60070. Beneficial is a debt collector as defined at Cal.  
 Civ. Code § 1788.2. Beneficial is amenable to service of process on an officer at its principal  
 office.

10. Defendant Asset receives its mail for its principal office at P. O. Box 2036,  
 Warren, MI 48093-7132. Asset is a debt collector as defined by 15 U.S.C. § 1692a(6), and as  
 defined by Cal. Civ. Code § 1788.2.

11. Plaintiff is ignorant of the true names or capacities of the defendants sued herein  
 under the fictitious names of DOE ONE through TEN inclusive.

12. Each of the fictitiously named Doe Defendants is responsible in some manner for  
 the wrongdoing alleged herein, and is liable for the damages recoverable by Plaintiff. Each of  
 the Defendants was acting as agent or employee for the others. Plaintiff will seek leave of the  
 court to name the Doe defendants when their true names and identities are ascertained.

13. Defendants Beneficial and Asset are hereafter sometimes referred to collectively

1 as "Defendants."

#### 2 IV. FACTUAL ALLEGATIONS

3 14. Some time ago, Plaintiff obtained a credit account from Defendant Beneficial.

4 15. Plaintiff used the account for purchase of consumer goods for Plaintiff's personal  
5 and household needs.

6 16. Plaintiff was unable to make payment on the account because of financial  
7 setbacks.

8 17. Plaintiff sought legal representation to help Plaintiff through this bleak financial  
9 period, and to deal with the unrelenting and stressful demands of Plaintiff's creditors and their  
10 collection agents. Plaintiff hired attorney Irving L. Berg for legal representation.

11 18. Plaintiff was advised by the attorney that, once Plaintiff's creditors and their  
12 collection agents were advised of attorney representation, the law required that the creditors and  
13 their collection agents must leave Plaintiff alone and deal with the attorney.

14 19. On October 9, 2007, Plaintiff's attorney sent Defendant Beneficial a letter  
15 advising of his representation of Plaintiff. Exhibit A is a copy of the letter sent to three offices of  
16 Defendant Beneficial. The letter states, among other things:

17 **The captioned consumer is a client of mine. All**  
18 **communications concerning my client's financial affairs,**  
19 **including the captioned debt, and any other debts you claim**  
**owed by my client shall hereafter be made to this office in**  
**writing.**

20 20. Some date thereafter, Defendant Beneficial appointed Defendant Asset as its agent  
21 to collect the alleged debt. Beneficial transferred and turned over to Defendant Asset Plaintiff's  
22 account, including the letter of attorney representation (Exhibit A) and notes of Defendant  
23 Beneficial's collection action taken against Plaintiff to collect the claim against Plaintiff.

24 21. On December 5, 2007, Defendant Asset, notwithstanding the notice of attorney  
25 representation (Exhibit A), wrote Plaintiff directly, on its own letterhead, demanding payment of  
26 the account. Exhibit B is a copy of the Asset letter.

27 22. Defendant Beneficial and its agent, Defendant Asset, are liable for sending a  
28 collection letter, Exhibit B, to Plaintiff after notice of attorney representation. Defendants'



1 conduct violates Cal. Civ. Code § 1788.14(c), which prohibits:

2 (c) Initiating communications other than statements of  
 3 account, with the debtor with regard to the consumer debt,  
 4 when the debt collector has been previously notified in writing  
 5 by the debtor's attorney that the debtor is represented by such  
 6 attorney with respect to the consumer debt and such notice  
 7 includes the attorney's name and address and a request by  
 8 such attorney that all communications regarding the consumer  
 9 debt be addressed to such attorney, unless the attorney fails to  
 10 answer correspondence, return telephone calls, or discuss the  
 11 obligation in questions.

12 23. Said conduct further violates 15 U.S.C. § 1692c(a)(2), which states a debt  
 13 collector may not communicate with a consumer without the consumer's permission:

14 (2) if the debt collector knows the consumer is represented by an  
 15 attorney with respect to such debt and has knowledge of, or can  
 16 readily ascertain, such attorney's name and address, unless the  
 17 attorney fails to respond within a reasonable period of time to a  
 18 communication from the debt collector or unless the attorney consents  
 19 to direct communication with the consumer....

### 20 CLAIM FOR RELIEF

21 24. Plaintiff incorporates by reference all of the foregoing paragraphs.

22 25. Defendants Beneficial and Asset violate Cal. Civ. Code § 1788.14(c) and 15  
 23 U.S.C. §§ 1692c(a)(2) by communicating with Plaintiff after notice of attorney representation.

### 24 V. PRAYER

25 WHEREFORE, according to the remedies allowable under the California law and Federal  
 26 law, as provided by Cal. Civ. Code § 1788.32:

27 The remedies provided herein are intended to be cumulative and  
 28 are in addition to any other procedures, rights, or remedies under  
 any other provision of law,

Plaintiff prays for damages as follows:

A. Statutory damages of \$2,000 as to Defendant Beneficial, pursuant to Cal. Civ.  
 Code §§ 1788.30(b) and 15 U.S.C. § 1692k;

B. Statutory damages of \$2,000 as to Defendant Asset, pursuant to Cal. Civ. Code §  
 1788.30(b) and 15 U.S.C. § 1692k;

C. Statutory damages of \$6,000 as to the Doe Defendants, each Doe Defendant to  
 pay its proportionate share.

COMPLAINT SEEKING DAMAGES

CONTRERAS V. HSBC CONSUMER  
 LENDING USA dba BENEFICIAL



1 D. Reasonable attorney's fees and costs, pursuant to Cal. Civ. Code § 1788.30 and 15  
2 U.S.C. § 1692k(a)(3).

3 Dated: 4/21/08

4 /s/  
Irving L. Berg  
5 THE BERG LAW GROUP  
145 Town Center, PMB 493  
6 Corte Madera, California 94925  
(415) 924-0742  
7 (415) 891-8208 (Fax)

8 ATTORNEYS FOR PLAINTIFF

9  
10 **JURY DEMAND**

11 Plaintiff demands trial by jury.

12  
13 Dated: 4/21/08

14 /s/  
Irving L. Berg

**EXHIBIT A**

*THE BERG LAW GROUP*  
*ATTORNEYS AND COUNSELORS AT LAW*  
*145 Town Center, PMB 493*  
*Corte Madera, California 94925*  
*Phone: (415) 924-0742 Fax: (415) 891-8208*  
*e-mail irvberg@comcast.net*

IRVING L. BERG, ESQ.

October 9, 2007

Beneficial Customer Services  
P. O. Box 8633  
Elmhurst, IL 60126

Beneficial Customer Service  
P. O. Box 8873  
Virginia Beach, VA 23450-8873

Beneficial Customer Service  
851 Van Ness Ave., Suite 2  
San Francisco, CA 94109

Re: Elizabeth Contreras  
Social Security No.: 617-98-9831  
Creditor: Beneficial

**Notice of Attorney Representation**

**Invitation to Debt Settlement Proposal**

Dear Sir or Madam:

The captioned consumer is a client of mine. My client is experiencing severe financial problems. My office has been retained to assist in resolving these problems. Consideration is being given to payment of selected debts, to the extent reasonable offers are received. I ask you to submit by facsimile, to my office facsimile number, (415) 891-8202, your bottom line pay-off proposal.

Keep in mind that all communications concerning my client's financial affairs, including the captioned debt, and any other debts you claim are owed by my client, shall hereafter be considered confidential and made only to my office.

My client's Social Security number is noted above. Should you have any question regarding the identification of my client, send your inquiry to the undersigned.

Keep in mind that, so long as my client is represented by my office, **California and federal law prohibit you from contacting my client, my client's employer, or my client's family regarding the debts. All inquiries regarding my client's financial affairs shall be directed to the undersigned.** In the unlikely event that the legal relationship with my client is terminated, you will be notified in writing. Please advise as to your direct facsimile number.

Sincerely,

Irving L. Berg  
ILB/rl

## **EXHIBIT B**

[illegible]